

September 17, 2007

Roberta Brooker
Indiana State Library
140 North Senate Avenue
Indianapolis, Indiana 46204

Re: Informal inquiry: Are all materials in Indiana public libraries public records?

Dear Ms. Brooker:

This is in response to your informal inquiry dated August 1, 2007. Your inquiry is whether all materials in public libraries in Indiana are public records under the Access to Public Records Act ("APRA") (Ind. Code §5-14-3). You indicate you understand certain files maintained by the library (e.g. personnel files and similar records) are public records, but you inquire whether books and other items loaned to the public are public records.

Indiana Code §5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of APRA. A "public record" means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2.

At the Indiana State Library and public libraries around the state, collections of various publications are kept for the purpose, among other things, of meeting the informational, educational, and research needs of state government as well as meeting the specialized library needs and interests of the citizens of Indiana. I.C. §4-23-7.1-3. Libraries around the state may issue borrowers' cards to allow citizens to borrow books, periodicals and other materials.

It is my opinion there is no question that public libraries are public agencies for the purposes of the APRA, and as such the records of the libraries should be open to inspection unless they are excepted from disclosure under section 4. I.C. §5-14-3-3. But it is my opinion the materials contained in the collections of the libraries are not public records. While the collections are "maintained" by the libraries, I do not believe they are "maintained" in the way contemplated by the APRA's definition of public record. I believe the APRA's public policy, that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees (I.C. §5-14-3-

1), in no way suggests that collections kept by libraries are public records. In no way can a member of the public obtain information regarding the affairs of government by being granted access under the APRA to the latest popular novel or magazine. Nor is a member of the public entitled to at any time personally inspect and copy the pages of a classic novel or reference book, if for instance, it has been borrowed by another person.

I do not use these examples to be glib but instead to illustrate the assertion that collections kept by the library do not contain information regarding the affairs of government and the official acts of public officials and employees, which is what the APRA intends to make public. While it may be the duty of the libraries to maintain collections which can be used by members of the public for their various research and informational needs and interests, these collections are not made of specific records required to be kept by a public agency. If collection materials were public records, I do not believe the libraries could ever check any materials out without violating section 3 of the APRA, making available for inspection and copying the public records of any public agency during regular business hours (I.C. §5-14-3-3) or section 7, requiring the public agency to protect public records from loss, alteration, mutilation, or destruction. I.C. §5-14-3-7.

Certainly records created, received, retained, maintained, or filed by or with libraries outside of collection materials are public records. I.C. §5-14-3-2. For instance, meeting memoranda of library board meetings, purchase orders, certain personnel records, and other records containing information regarding the affairs of the public agency are all public records. But materials kept by libraries in collections for the purpose of providing informational, educational, and research assistance are not, in my opinion, public records for the purposes of the APRA.

Best regards,

A handwritten signature in cursive script that reads "Heather Willis Neal".

Heather Willis Neal
Public Access Counselor